

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

IYER et al.

Serial No. 09/581,122

Filed: June 15, 1998

Art Unit: unassigned

Examiner: unassigned

Attorney Docket No.: 98-503-US

FETAL OXIMETRY SYSTEM
AND SENSOR

Pittsburgh, Pennsylvania 15230

**PETITION UNDER 37 C.F.R. § 1.47(a) TO
EXECUTE APPLICATION FOR NON-SIGNING INVENTORS**

BOX PCT
Commissioner for Patents
Washington, DC 20231

Sir:

Applicants Vijah K. Iyer, Christopher A. Cutler, William D. Wallace, Daniel J. McGraw, and Trent W. Banks, joint inventors of the above-identified invention, hereby respectfully request authorization to execute the subject patent application under 37. C.F.R. § 1.47(a) on behalf of joint inventors Robert M. Johnson, Johannes Buschmann, Reinhold Falkowski, Steven R. Smith, Nick Tu and Clifford G. Montagnoli, who after diligent effort cannot be found to join in this application.

I. Proof of Pertinent Facts

As evidenced by the Declaration of Cheryl L. Gastineau ("Ms. Gastineau"), agent for Applicants, a copy of which is

attached hereto as Attachment 1, Robert M. Johnson, Johannes Buschmann, Reinhold Falkowski, Steven R. Smith, Nick Tu and Clifford G. Montagnoli have not been found to join in the U.S. application and execute the Declaration after reasonable and diligent efforts were taken.

II. The Action Is Necessary To Preserve The Rights
Of The Parties Or Prevent Irreparable Harm

To execute the subject application the combined Declaration and Power of Attorney document must be signed and filed. As demonstrated above, Robert M. Johnson, Johannes Buschmann, Reinhold Falkowski, Steven R. Smith, Nick Tu and Clifford G. Montagnoli cannot be found to sign the declaration document. Thus, to prevent the subject application from being abandoned and to otherwise to protect the other joint inventors and Assignee Respironics, Inc.'s patent rights, it is necessary for the other joint inventors to execute the subject application on behalf of Robert M. Johnson, Johannes Buschmann, Reinhold Falkowski, Steven R. Smith, Nick Tu and Clifford G. Montagnoli under 37. C.F.R. § 1.47(a).

III. Last Known Address of Non-Signing Inventors

Robert M. Johnson
481 Ivy Park Lane
Atlanta, GA 30342

Johannes Buschmann
Birkenleiten 9
D81453 Munich
Federal Republic of Germany

Reinhold Falkowski
Birkenleiten 9
D81453 Munich
Federal Republic of Germany

Steven R. Smith
1116 East 13200 Street
Draper, UT 84020

Nick Tu
444 South Ivy Drive
Midvale, Utah 84047
and
8188 Ivy Drive,
Midvale, Utah 84047

Clifford G. Montagnoli
5758 South Butler Circle
Murray, UT 84107

IV. Conclusion

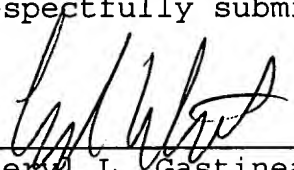
For the reasons presented above, Applicants respectfully submit that Robert M. Johnson, Johannes Buschmann, Reinhold Falkowski, Steven R. Smith, Nick Tu and Clifford G. Montagnoli, who are believed to be inventors in the above-identified U.S. application cannot be found to execute the application, as set forth in the Declaration of Ms. Gastineau at Attachment 1.

Accordingly, Applicants respectfully request the authorization under 37. C.F.R. § 1.47(a) to file the above-identified U.S. application on behalf of the non-signing joint inventors, Robert M. Johnson, Johannes Buschmann, Reinhold

Falkowski, Steven R. Smith, Nick Tu and Clifford G. Montagnoli,
be granted and that a Notice to that effect be provided.

Respectfully submitted,

Dated: June 11, 2001



Cheryl L. Gastineau
Reg. No. 39,469

REED SMITH LLP
P.O. Box 488
Pittsburgh, PA 15230
(412) 288-4152

Agent for Applicants

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**FETAL OXIMETRY SYSTEM
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Washington, D.C. 20231

DECLARATION OF MS. CHERYL L. GASTINEAU

Sir:

I am a patent agent with Registration No. 39,469 with
Reed Smith LLP, P.O. Box 488, Pittsburgh, Pennsylvania 15230.

Robert M. Johnson

On March 29, 2001, I sent Robert M. Johnson
("Mr. Johnson") a letter via first class mail to Robert M.
Johnson, 481 Ivy Park Lane, Atlanta, GA 30342. The letter
requested he sign and date an enclosed Combined Declaration and
Power of Attorney ("Declaration") for the above-identified patent
application and to return said Declaration to me no later than

one week from receipt in an enclosed "prepaid postage" envelope.

The letter was returned by the United States Postal Service as "RETURNED TO SENDER UNDELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

Johannes Buschmann

On March 29, 2001, I sent Johannes Buschmann ("Mr. Buschmann") a letter via first class mail to Johannes Buschmann, Birkenleiten 9, D-81453 Munich, Federal Republic of Germany. The letter requested he sign and date an enclosed Combined Declaration and Power of Attorney ("Declaration") for the above-identified patent application and to return said Declaration to me no later than one week from receipt in an enclosed "prepaid postage" envelope. I mailed a second request on May 31, 2001 to Mr. Buschmann at Birkenleiten 9, D-81453 Munich, Federal Republic of Germany and also faxed to him a request at No. 011-49-89-680-6650. As of June 11, 2001, I have not received any correspondence from Mr. Buschmann.

Reinhold Falkowski

On March 29, 2001, I sent Reinhold Falkowski ("Mr. Falkowski") a letter via first class mail to Reinhold Falkowski, Birkenleiten 9, D-81453 Munich, Federal Republic of Germany. The letter requested he sign and date an enclosed

Combined Declaration and Power of Attorney ("Declaration") for the above-identified patent application and to return said Declaration to me no later than one week from receipt in an enclosed "prepaid postage" envelope. I mailed a second request on May 31, 2001 to Mr. Falkowski at Birkenleiten 9, D-81453 Munich, Federal Republic of Germany and also faxed to him a request at No. 011-49-89-680-6650. As of June 11, 2001, I have not received any correspondence from Mr. Falkowski.

Steven R. Smith

On March 29, 2001, I sent Steven R. Smith ("Mr. Smith") a letter via first class mail to Steven R. Smith, 1116 East 13200 Street, Draper, UT 84020. The letter requested he sign and date an enclosed Combined Declaration and Power of Attorney ("Declaration") for the above-identified patent application and to return said Declaration to me no later than one week from receipt in an enclosed "prepaid postage" envelope. The letter was returned by the United States Postal Service as "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

Nick Tu

I sent Mr. Nick Tu ("Mr. Tu") at the address of 444 South Ivy Drive, Midvale, UT 84047 a letter dated January 18, 2001. Enclosed with the letter in an envelope was a copy of U.S.

Patent Application No. 09/581,122 and a Combined Declaration and Power of Attorney ("Declaration") to be executed by Mr. Tu for said application. Also enclosed was an Assignment of Mr. Tu's inventorship rights to the invention in the above-referenced application to the Applicant, Respironics, Inc. The letter requested Mr. Tu to sign and date both the Declaration and the Assignment and return them no later than one week after receipt.

The envelope was returned to us unopened on January 29, 2001 and stamped with the message "RETURN TO SENDER, NO SUCH NUMBER."

My secretary searched the internet and found a Nicholas Tu at 8188 Ivy Drive, Midvale, UT 84047. We remailed the contents of the previously identified envelope on January 30, 2001. We sent an additional request to Nicholas Tu at 8188 Ivy Drive, Midvale, UT 84047 on May 31, 2001. As of June 11, 2001, I have not received any correspondence from Mr. Tu.

Clifford G. Montagnoli

On March 29, 2001, I sent Clifford G. Montagnoli ("Mr. Montagnoli") a letter via first class mail to Clifford G. Montagnoli, 5758 South Butler Circle, Murray, UT 84107. The letter requested he sign and date an enclosed Combined Declaration and Power of Attorney ("Declaration") for the above-

identified patent application and to return said Declaration to me no later than one week from receipt in an enclosed "prepaid postage" envelope. I mailed a second request on May 31, 2001 to Clifford G. Montagnoli, 5758 South Butler Circle, Murray, UT 84107. As of June 11, 2001, I have not received any correspondence from Mr. Montagnoli.

On April 30, 2001, I contacted Leila Mobley of Respironics, Inc. to inquire if she could provide different addresses for the above-identified inventors. She contacted me on May 11, 2001 to indicate she could not find different addresses for the above.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may

jeopardize the validity of the application or any patent issuing thereon.

Date: June 11, 2001

Name: Cheryl L. Gastineau

Title: Patent Agent

Signature: 